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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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EXAMINER

BENZION, G

ART UNIT

PAPER NUMBER

1638

DATE MAILED:

11/21/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/459,022

Applicant(s)
Cheng et al.

Examiner
Gary Benzion, Ph.D.

Group Art Unit
1638



☒ Responsive to communication(s) filed on 5 Sep 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-17 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1, 2, 10, 12, and 15 is/are rejected.

☒ Claim(s) 3-9, 11, 13, 14, 16, and 17 is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Status of the Application

Claims 1 and 3 have been amended and claims 17 newly added. Claims 1-17 are pending.

Detailed Action

Claim 1, newly amended, is rejected and claims 2, 10, 12 and 15 remain rejected under 35 U.S.C. § 102 (b) as being anticipated by Hiei et al. for the reasons of record as set forth at page 3 of the previous Office Action.

Applicants argue that Hiei et al. fail to disclose the step of cocultivation of the *Agrobacterium* – inoculated explants under conditions which decrease the weight of the explant as set forth in the claims of the instant application. Applicants' arguments have been carefully considered and are not deemed persuasive.

Hiei et al. clearly disclose the media used cocultivation comprised either 2N6-AS (comprising) or N6S3-AS (comprising glucose at 10 g l^{-1}) from which the explants were then transferred to 2N6-CH, 2N6K-CH or N6S3-CH, followed further by culture on N6-7CH (comprising 20 g l^{-1}). Accordingly, the differences in media composition present a higher osmotic potential in the N6-7CH medium than the 2N6-AS or N6S3-AS media. Thus Hiei et al. clearly teach the claimed invention.

Objection

Claims 3-9, 11, 12-14 and 16-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims.

Summary

No claim is allowed.

Inquires


Applicants amendment necessitated the new ground(s) of rejection presented in this Office Action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP §706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 CFR 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this or earlier communication from the examiner should be directed to Gary Benzion, Ph.D. whose telephone number is (703) 308-1119. The examiner can normally be reached on Monday-Friday from 7:00 AM to 3:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paula Hutzell can be reached on (703)-308-4310. Any inquiry of a general nature or relating to the status of this application should be directed to the Gwen Payne, Patent Analyst whose telephone number is (703) 308-2475.

Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989).

Benzion
11/17/00


GARY BENZION, Ph.D.
PRIMARY EXAMINER
GROUP ART UNIT 1638